

ANNAPURNA

v.

MALLIKARJUN & ANR.

(Civil Appeal No. 4469 of 2014)

APRIL 11, 2014.

[ANIL R. DAVE AND SHIVA KIRTI SINGH, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

O. 21, r. 89 – Application to set aside sale on deposit – Period of limitation to make the deposit – Amount deposited on the opportunity given by writ court – Held: Deposit of the requisite amount in the court is a condition precedent or a sine qua non to application for setting aside the execution of sale and such an amount must be deposited within the prescribed time for making the application otherwise the application must be dismissed – Order of High Court directing reconsideration of application under O. 21, r. 89, set aside – Limitation Act, 1963 – Schedule I – Article 127.

The instant appeal arose out of the order of the High Court allowing the writ petition filed by the judgment-debtor and setting aside the orders of the executing court and the appellate court dismissing his application under O. 21, r. 89, C.P.C. and remitting the matter to the executing court for disposal of the application under O. 21, r. 89, CPC, primarily because the judgment-debtor on the opportunity given by the writ Court, had deposited the amount.

Allowing the appeal, the Court

HELD: A conjoint reading of rr.89 and 92 of O. 21, CPC and Article 127 of the Limitation Act, 1963 makes it clear that although O. 21 r. 89, CPC does not prescribe any period either for making the application or the

A required deposit, Article 127 of the Limitation Act prescribes 60 days as the period within which such an application should be made. Deposit of the requisite amount in the court is a condition precedent or a *sine qua non* to application for setting aside the execution of sale and such an amount must be deposited within the prescribed time for making the application otherwise the application must be dismissed. In the instant case, in absence of required deposit made by the judgment-debtor within the time mandated by law, the High Court erred in directing for re-consideration of the petition under O. 21 r. 89, CPC, as such an exercise would be only an exercise in futility because the executing court does not have any option but to reject the petition. Accordingly, the judgment under appeal is set aside. [Paras 7-9] [303-C-H]

D *Dadi Jagannadhamn v. Jammlu Ramulu & ors.* 2001 (2) Suppl. SCR 60 = (2001) 7 SCC 71; and *Ram Karan Gupta v. J.S. Exim Ltd. & Ors.* 2012 (12) SCR 683 = (2012) 13 SCC 568 - relied on

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Case Law Reference :

2001 (2) Suppl. SCR 60 relied on Para 5

2012 (12) SCR 683 relied on Para 5

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4469 of 2014.

From the Judgment and Order dated 18.02.2010 of the High Court of Karnataka at Bangalore in WP No. 10550 of 2006.

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Girish Ananthamurthy (for Vaijyanthi Girish) for the Appellant.

S.K. Kulkarni, M. Girish Kumar, Ankur S. Kulkarni for the Respondents.

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The Judgment of the Court was delivered by

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SHIVA KIRTI SINGH, J. 1. Leave granted.

2. The matter relates to an Execution Proceeding in which the Executing Court put a house bearing CTS No.1610/B to auction and after rejecting the objections raised by the judgment-debtor, Respondent no.1 herein, confirmed the Court Sale by issuing Certificate of Sale in favour of the auction purchaser, the Appellant. Against the order dated 18.12.2004 passed by the Executing Court dismissing his application under Order XXI Rule 89 of the Code of Civil Procedure (CPC) the judgment-debtor preferred an appeal being Miscellaneous Appeal No.1/2005 before Civil Judge (Sr. Division). That appeal was dismissed on 26.7.2006 with a finding that the appeal was not maintainable. The judgment-debtor then preferred Writ Petition No.10550 of 2006 before the High Court of Karnataka, Circuit Bench at Gulbarga to challenge the order of the Executing Court as well as of the Appellate Court. The High Court, by the order under appeal dated 18.2.2010, allowed the writ petition by quashing the impugned order of the Executing Court and remitting the matter back to the Executing Court for fresh disposal of judgment-debtor's application under Order XXI Rule 89 of the CPC.

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3. The moot question of law raised in this appeal does not require this Court to go into facts in any detail. The issue of law raised on behalf of the Appellant is whether the High Court could have ignored the settled law that under Article 127 of the Limitation Act, 1963 an application to set aside a sale under Order XXI Rule 89, CPC has to be filed within 60 days from the date of sale and same is the period for making the required deposit.

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4. On facts, it is sufficient to notice that after success in O.S.No.26/1969, the decree-holder instituted execution proceedings in E.P.No.17/1993. The property in question was sold through Court Sale on 7.8.2004. The judgment-debtor filed

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A an application under Order XXI Rule 89, CPC on 3.9.2004 to
 set aside the Court Sale along with an application to appoint
 a Court Commissioner to find out the market value of the sold
 property. Decree-holder filed objections and thereafter by
 different orders passed on 18.12.2004 the Executing Court
 B rejected the applications of the judgment-debtor and issued
 Certificate of Sale in favour of the auction purchaser. On
 15.1.2005, the Executing Court closed the Execution Petition
 as fully satisfied. Admittedly, at no point of time, the judgment-
 debtor made any deposit as required by Order XXI Rule 89,
 C CPC before the Executing Court. As noticed earlier, judgment-
 debtor's Miscellaneous Appeal was dismissed as not
 maintainable. In the Writ Petition preferred by him, the High
 Court agreed that Miscellaneous Appeal was not maintainable
 but primarily because the judgment-debtor, on an opportunity
 D given by the Writ Court, had deposited Rs.25,000/- over and
 above the amount for which the property was sold, impugned
 order was passed to remit the matter back to the Executing
 Court for fresh disposal of the application under Order XXI Rule
 89 of the CPC with liberty to the writ petitioner to place available
 materials before the Executing Court to show that the value of
 E the property is more than the price obtained in the Court
 auction.

5. According to learned counsel for the Appellant, the High
 Court erred in ignoring the relevant provisions such as Rules
 F 89 and 92 of Order XXI of the CPC and Article 127 of the
 Limitation Act otherwise it would have come to the only possible
 conclusion that in absence of required deposit being made
 within 60 days, the Executing Court had no option but to reject
 the petition under Order XXI Rule 89 of the CPC. In support of
 G his submission, learned counsel placed reliance upon a recent
 judgment of this Court in the case of *Ram Karan Gupta v. J.S.
 Exim Ltd. & Ors.* (2012) 13 SCC 568 and a Constitution Bench
 judgment in the case of *Dadi Jagannadham v. Jammlu
 Ramulu & Ors.* (2001) 7 SCC 71 which has been referred to
 H and relied upon in the case of *Ram Karan Gupta* (supra).

6. On the other hand, learned counsel for Respondent no.1, judgment-debtor, submitted that the High Court has adopted a just and proper course to give another chance to the judgment-debtor to prove his objection that the property sold in the court auction was not valued properly. He submitted that such a course of action was warranted by the peculiar facts and circumstances of the case. A
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7. A careful perusal of the provisions in Rules 89 and 92 of Order XXI, CPC and Article 127 of the Limitation Act leaves no manner of doubt that although Order XXI Rule 89, CPC does not prescribe any period either for making the application or the required deposit, Article 127 of the Limitation Act now prescribes 60 days as the period within which such an application should be made. In absence of any separate period prescribed for making the deposit, as per judgment of the Constitution Bench in the case of *Jammlu Ramulu* (supra) the time to make the deposit and that for making the application would be the same. C
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8. In the case of *Ram Karan Gupta* (supra), it has been held, after considering the Constitution Bench judgment and other relevant case laws, that deposit of the requisite amount in the court is a condition precedent or a *sine qua non* to application for setting aside the execution of sale and such an amount must be deposited within the prescribed time for making the application otherwise the application must be dismissed. E
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9. In view of the settled law on the issue as noted above, in this case it must be held that the High court committed grave error of law in not noticing the relevant provisions of CPC and the Limitation Act and in allowing the Writ Petition for reconsideration of the petition under Order XXI Rule 89, CPC. In absence of required deposit made by the judgment-debtor within the time mandated by law, such an exercise would be only an exercise in futility because the Executing Court does G
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A not have any option but to reject the petition. In such a situation, the judgment under appeal is set aside and the Appeal is allowed with a cost of Rs.10,000/- (Rupees Ten Thousand) payable by Respondent no.1 to the Appellant.

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Rajendra Prasad

Appeal allowed.